

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARYL J. DAVIS,

Plaintiff,

-against-

PORT JERVIS COMMUNITY DEVELOPMENT;
NORA GALLAGHER/GOETZ; VALERIE
MAGINSKY, MANAGER,

Defendants.

20-CV-1341 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

By order dated April 23, 2021, the Court dismissed the complaint for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The order dismissing Plaintiff’s complaint was entered on the Court’s docket on April 27, 2021. On May 24, 2021, although his time to appeal had not yet expired, Plaintiff Daryl J. Davis filed a motion for an extension of time to file a notice of appeal, seeking an extension of time to appeal the Court’s April 23, 2021 order. He did not file a notice of appeal.

A notice of appeal must “designate the judgment, order, or part thereof being appealed.” Fed. R. App. P. 3(c)(1)(B); *The New Phone Co. v. City of New York*, 498 F.3d 127, 131 (2d Cir. 2007) (holding that appellate jurisdiction “depends on whether the intent to appeal from [a] decision is clear on the face of, or can be inferred from, the notice[] of appeal”). Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal in a civil case must be filed within thirty days after entry of judgment. “[T]he taking of an appeal within the prescribed time is mandatory and jurisdictional.” *In re WorldCom, Inc.*, 708 F.3d 327, 329 (2d Cir. 2013) (citation and internal quotation marks omitted).

Although the motion for an extension of time to appeal was filed within thirty days from the entry of judgment and demonstrates Davis's intent to appeal the dismissal of his case, it is not a notice of appeal. Within thirty days from the date of this order, Davis must complete and return the attached notice of appeal form. Should Davis comply with this order, the Court will construe the motion for an extension of time to appeal as a timely filed notice of appeal, and the notice of appeal as a supplemental filing. Once Davis files a notice of appeal, this action will be transferred to the United States Court of Appeals for the Second Circuit. The Second Circuit will inform Plaintiff if it requires any additional documents, and if so, when it requires them.

CONCLUSION

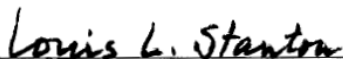
Plaintiff's motion for an extension of time to file a notice of appeal (ECF No. 13) is denied as moot.

Plaintiff is directed to file a notice of appeal within thirty days of the date of this order.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: June 9, 2021
New York, New York



Louis L. Stanton
U.S.D.J.